

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
ZONING ITEMS PUBLIC HEARING**

**June 23, 2011**

- I. **CALL TO ORDER** – The meeting was called to order at 1:44 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Carla Blanton; Mike Cravens; Mike Owens; Derek Paulsen (left at 3:53 p.m.); Carolyn Richardson, Chair; Lynn Roche-Phillips; and William Wilson. Absent were Patrick Brewer, Marie Copeland, and Ed Holmes.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Chris Taylor; and Stephanie Cunningham. Other staff members present were Rochelle Boland; Department of Law; Captain Charles Bowen, Division of Fire and Emergency Services; Steve Parker, Division of Engineering; and Jeff Neal, Division of Traffic Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Mr. Owens, and carried 8-0 (Brewer, Copeland, and Holmes absent) to approve the minutes of the May 12, 2011, and May 26, 2011, meetings.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, June 2, 2011, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens and Eunice Beatty. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Tom Martin, Cheryl Gallt, Chris Taylor, Denice Bullock, Jimmy Emmons and Traci Wade, as well as Captain Charles Bowen, Division of Fire & Emergency Services, and Rochelle Boland, Department of Law. The Committee made recommendations on plans as noted.

*General Notes*

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

**A. DEVELOPMENT PLANS**

1. **DP 2011-40: GESS PROPERTY, UNIT 1 (8/2/11)\*** - located at 480 Chilesburg Road. (EA Partners)

Note: The Planning Commission postponed this plan at the May 12, 2011, and June 9, 2011, meetings. This development plan requires the posting of a sign, and an affidavit of such.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the proposed sidewalk system and access easements.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm, sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
10. Delete note #5.
11. Correct note #13.
12. Denote the tree protection area (TPA).
13. Correct graphic scale and vicinity map.
14. Clarify the floodplain information.
15. Clarify the proposed building envelope for type "B" units.
16. Revise note #10 to denote no construction access from Chilesburg Road.
17. Correct site statistics to change "allowed" to "permitted."
18. Provided the Planning Commission makes a finding for the access easement.
19. Provided the Planning Commission makes a finding for compliance with the EAMP.
20. Revise the 200' setback from right-of-way (rather than from centerline).

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21. Denote trunk line sewer easement.
22. Discuss turning radii proposed for access easements.
23. Discuss internal pedestrian system connectivity.
24. Discuss justification for a private access easement versus a private street.
25. Discuss the townhouse design standards and EAMP Compliance standards.

Staff Presentation: Mr. Martin presented the rendered final development plan, briefly orienting the Commission to the location of the subject property in the southwestern portion of the overall Gess Property development. He also noted the location of Unit 8 of the Gess Property, which was recently reviewed by the Planning Commission.

Mr. Martin stated that the subject property is just over 21 acres in size, and the petitioner is proposing to construct 100 townhouse units, in three different arrangements. Each townhouse is proposed to be a minimum of 1,300 square feet in size, with one or two-car garages. The petitioner is proposing 209 total parking spaces, including the garages, which meets the parking requirement of 150 spaces for the proposed development. The loop street proposed through the development would provide access to the property directly across from the existing Marcus Trail, which serves Units 4 and 12 of the Gess Property.

Mr. Martin said that the subject property has several constraints: a FEMA floodplain; a 200' setback from Chilesburg Road, as required by the Expansion Area Master Plan; two significant easements, including a 50' high-pressure gas line; and a Special Design Area, which has an open space requirement of 60%. The site constraints required the petitioner to cluster the proposed townhomes and it does meet the required 12.8 acres of open space, at just over 13 acres in size.

Mr. Martin stated that the staff initially recommended postponement of this final development plan. The staff subsequently met with the petitioner, who submitted a revised plan, that addressed many of the staff's initial concerns. Based on that revised plan, the staff prepared a revised recommendation, copies of which were distributed to the Commission members prior to this hearing. Mr. Martin said that many of the remaining conditions were "clean-up" items; some of the other conditions require minor changes to the layout of the proposed townhomes, and that the building envelopes be included on the plan. The staff had concerns about the proposed pedestrian access to the property, which was originally limited to an internal sidewalk. The revised plan, however, depicts the internal sidewalk with connections to the surrounding development, as well as to the greenway trail system that is proposed for the Gess Property. The original driveway on the property will be dedicated as part of the trail system as well. Mr. Martin noted that no access is permitted to Chilesburg Road.

With regard to condition #12, Mr. Martin stated that, in the Expansion Area, developers are required to file both a preliminary development plan and a final development plan. Should a developer choose to subdivide a property, they would also have to file a preliminary subdivision plan and meet the subdivision requirements. Most developers file a combined preliminary development plan and preliminary subdivision plan, since most residential developments consist of single-family homes. Since the proposed development is for townhomes, no subdivision plan will be necessary; so the question of access to the property and its ability to function as a street is not applicable. Should the petitioner wish to subdivide the property, they would be required to file a subdivision plan for review by the Commission, and address the adequacy of the driveway system and circulation pattern. Mr. Martin noted that condition #13 refers to the addition of exaction information to the plan, since building permits could be obtained based on this plan. He added that exactions are usually paid per lot as permits are obtained, but the subject property contains only one lot for all of the townhomes.

With regard to the required EAMP Compliance Report, Mr. Martin stated that all of the primary infrastructure components, including Hays Boulevard, have already been constructed in the area of the subject property. Sanitary sewer and stormwater facilities are also in place in the area of the subject property, including a large regional detention basin located very near the property. The density for the entire EAR-1 portion of the Gess Property, which is approximately 2.7 units per acre, is well within the EAMP requirements. The proposed greenway, pedestrian trails, sidewalks, and other aspects of pedestrian connectivity meet the Community Design Element requirements of the EAMP, as do the architectural details of the proposed townhomes. In reviewing the required elements of the EAMP, the staff did find that the proposed development is in compliance with the eamp, for the following reasons:

1. The proposed EAR-1 and EAR-2 residential densities of 2.99 and 3.57 dwelling units/acre are, respectively, in compliance with the future land use element of the EAMP.
2. The development uses the site topography and trees on the site to create distinct neighborhoods.
3. The hierarchy of street widths will promote slower traffic movements in the new neighborhoods, while still serving the functionality of an inter-connected street system.
4. The reconfiguration of the Special Design Area utilizes the 60% common open space area as required by the EAMP.
5. The developer has constructed the necessary sanitary sewer trunk lines in order to serve the areas proposed for residential development at this time. Additional trunk lines are expected to be built as required as development progresses.
6. The proposed detention shall be constructed in compliance with the EAMP Stormwater Management Plan.

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Commission Questions: Mr. Owens asked if the pedestrian trail is proposed to be a looped system. Mr. Martin answered that it is proposed to be linear, in order to connect to the overall trail system proposed for the entire Gess Property. Mr. Owens asked when the trail system is proposed to be completed. Mr. Martin responded that he did not know, since some aspects of the construction of trails are out of the applicant's control. With regard to the design standards, Mr. Owens asked if the applicant had provided any elevations, drawings, or renderings of the proposed townhomes. Mr. Martin answered that the applicant had provided the standards on their plan, and Compliance Report indicated that the proposed townhomes would be similar to the existing single-family homes in the area.

Ms. Roche-Phillips asked if the proposed townhomes would be available for rent, or under common ownership, since the applicant is not proposing to subdivide the property. Mr. Martin responded that this is a proposed final development plan, similar to a plan for an apartment complex. Under this plan, it could be treated as a condominium development or rented out. Should the applicant wish to subdivide the property, they would have to file a preliminary subdivision plan for consideration by the Planning Commission. At that time, the access system would have to meet all of the necessary requirements of the Subdivision Regulations before the property could be subdivided, or the Commission would have to make a finding for an access easement. Ms. Roche-Phillips asked what design qualities of the streets would determine if they met the necessary requirements. Mr. Martin answered that, in this situation, the applicant is providing the appropriate width for the access easement; the determining factor would be the construction of the access, specifically the materials, base, pavement, etc. He added that the staff had initially had some concerns about the turning radius on the proposed access easement, but they later determined that it met all of the necessary criteria. Mr. Sallee added that the location of perpendicular parking typically distinguishes an access easement from a public street, since parking perpendicular to a public right-of-way is not permitted.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He entered the required affidavit and photograph into the record, stated that the petitioner is in agreement with the staff's revised conditions, and requested approval.

Action: A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 8-0 (Brewer, Copeland, and Holmes absent) to approve DP 2011-40, subject to the 13 revised conditions; noting that the proposed development is in compliance with the EAMP, for the reasons provided by staff.

2. DP 2011-41: BLACKFORD PROPERTY, PHASE 1, UNIT 5 & PHASE 3 (AMD) (8/2/11)\* - located on Blackford Parkway. (Council District 12)  
**(EA Partners)**

Note: The Planning Commission postponed this plan at the June 9, 2011, meeting. The purpose of this amendment is to revise the single family residential area layout and to revise the Special Design Area near Walnut Grove Lane. This development plan requires the posting of a sign, and an affidavit of such.

The Subdivision Committee Recommended: **Postponement.** There were questions regarding the justification for altering the Special Design Area, and questions about storm water improvements in that area.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm, sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Addition of Blackford Parkway cross-section.
11. Delete note #14.
12. Revise the 200' building line to be from right-of-way (not centerline).
13. Provided the Planning Commission makes a finding that the plan is in compliance with the EAMP.
14. Discuss the details for the greenway connection at Lots 394 & 395.
15. Discuss street and lotting conflicts with the EAMP storm water plans.
16. Discuss the justification for changes to the Special Design Area required by Article 23A-2(c) of the Zoning Ordinance.
17. Discuss the extent of the sinkhole (closed contour area) on Lots 90 & 91.
18. Discuss the cross-section for Blackford Parkway, or possible driveway restrictions.

Staff Presentation: Mr. Taylor oriented the Commission to the location of the subject property between Man O' War Boulevard and Walnut Grove Lane, just outside Interstate 75 and Polo Club Boulevard. He said that the purpose of this development plan is to create 460 single-family residential lots; 372 units on the EAR-1 portion of the property, and 88 on

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the EAR-2 portion. The plan depicts a number of open space areas, including a 50-foot landscape buffer required as a conditional zoning restriction; a Tree Protection Area; several areas proposed to be dedicated as greenway; HOA-maintained areas; a 200-foot setback from the established right-of-way of Walnut Grove Lane; and an area designated by the EAMP as a Special Design Area, which has a 60% open space requirement. The revised development plan also depicts a proposed detention basin, which was recommended under the EAMP stormwater management guidelines. The location of that basin has been altered slightly from the location originally recommended in the EAMP.

Mr. Taylor stated that the applicant's original plan submission was recommended for postponement by the Subdivision Committee, because the location of the detention basin had not been depicted on the plan. The staff recommended postponement at that time as well, in order for the applicant to address that critically important stormwater issue. The primary change in the revised plan was to redistribute the single-family lots near the Clark Property and the LFUCG park property in order to accommodate the detention basin. Based on the current plan, the staff is now recommending approval of this development plan:

The Staff Recommended: **Approval**, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
- ~~10. Addition of Blackford Parkway cross-section.~~
- ~~11. Delete note #14.~~
- ~~12. Revise the 200' building line to be from right-of-way (not centerline).~~
- ~~10. 13.~~ Provided the Planning Commission makes a finding that the plan is in compliance with the EAMP.
- ~~11. 14.~~ Discuss the details for the greenway connection at Lots ~~394 & 395~~ 391 & 392.
- ~~12. 15.~~ ~~Discuss street and lotting conflicts~~ Resolve tree preservation area conflict with the EAMP storm water plans (~~remove T.P.A.~~).
- ~~16. Discuss the justification for changes to the Special Design Area required by Article 23A-2(c) of the Zoning Ordinance.~~
- ~~13. 17.~~ ~~Discuss~~ Resolve the extent of the sinkhole (identify closed contour area) on Lots 90 & 91.
- ~~14. 18.~~ ~~Discuss Denote: No development of Lots 412-416 until the cross-section for Blackford Parkway, or possible driveway restrictions is constructed.~~

Mr. Taylor stated, with regard to the revised conditions recommended for approval, that #14 requires that Lots 412-416 not be developed until such time as a new portion of Blackford Parkway is constructed on the adjacent Clark Property. Condition #13 refers to a sinkhole that has been identified on the subject property. Standard notes are typically added to the preliminary subdivision plan for any property that has a sinkhole. In this instance, the staff is requesting that the petitioner delineate on the plan the entire area of the closed contour that makes up the sinkhole, as well as adding the standard sinkhole note. Mr. Taylor said that condition #12 pertains to the location on the plan of the proposed detention basin in the identified Tree Protection Area. The staff does not believe that the applicant can construct the basin in that area and retain the trees, so that portion of the property should not be marked as a Tree Protection Area. Condition #11 refers to a discussion item that the staff had raised the last time this plan was before the Commission, which relates to the greenway connection at Lots 391 and 392. The staff wanted to maintain an opening from those lots to the adjacent LFUCG park property, (a similar access to the park was provided on the Clark Property) which also adjoins the area designated for a park to the south. Mr. Taylor displayed an exhibit depicting the configuration of the pedestrian access from the Clark Property, Unit 2, to the proposed LFUCG park, including a corresponding non-buildable area intended to maintain visibility to the greenway and provide for a 10-foot pedestrian access easement. The staff is recommending that a similar solution be provided for the subject property.

Commission Questions: Ms. Roche-Phillips asked how many lots are included on this development plan. Mr. Taylor responded that this development plan depicts a total of 460 lots, including the EAR-1 and EAR-2 areas. Ms. Roche-Phillips asked what the proposed lot sizes are for the property. Mr. Taylor answered that the applicant is proposing a mixture of 60'x120' lots, 50'x120' lots, and 45'x115' lots. He used the rendered development plan to indicate the proposed areas for each of the lot sizes. Mr. Taylor noted that the overall density proposed for the Blackford Property in the EAR-1 zone is 538 dwelling units, at a density of 2.99 units/acre; in the EAR-2 zone, the applicant is proposing a residential density of 3.57 units per acre.

Mr. Owens asked if the number of lots proposed indicated a significant change from the previously approved plan for the subject property. Mr. Taylor answered that the most significant change on the current development plan is the location of the density, not the number of units proposed. He noted that the street that is proposed to border the Greenbrier subdivi-

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sion is now proposed to be "single-loaded" against the required 50' conditional zoning buffer, which required the reconfiguration of the other lots.

Ms. Roche-Phillips asked Mr. Taylor to clarify the meaning of a "single-loaded" street. Mr. Taylor responded that he was referring to a residential street with lots on only one side of the street as well.

EAMP Compliance Report: With regard to the EAMP compliance criteria for this development plan, Mr. Martin stated that the proposed density on the subject property does fall within the density recommendations of the Expansion Area Master Plan for the EAR-1 and EAR-2 zones. He added that a portion of the subject property is designated as a Special Design Area, which has a 60% open space requirement. This plan does meet that requirement, and it respects the existing open space and trees along Walnut Grove Lane.

Mr. Martin stated, with regard to the infrastructure requirements of the EAMP, that the detention basin included on the Gess Property plan that was discussed earlier at this meeting was required by the stormwater element of the EAMP. With the inclusion of the basin on this development plan, it can be considered to be in compliance with the EAMP, but the location of the basin might require the removal of some of the proposed lots at the time of construction. Mr. Martin noted that there is an existing large regional detention basin located downstream on another portion of the Blackford Property, which was designed to serve the entire property. With regard to the required sanitary sewer infrastructure on the subject property, a temporary pump station has been constructed to serve the entire Blackford development. When the pump station that is currently under construction on the north side of Winchester Road goes online, the temporary pump station will go offline, as the new station is designed to accommodate the entire Blackford Property development, as well as the Greenbrier subdivision and several other residential areas. Mr. Martin stated that the existing Blackford Parkway meets the requirements of the EAMP, since it is identified in the EAMP and currently serves the entire development. For these reasons, the proposed plan can be considered to be in compliance with the infrastructure requirements of the EAMP.

Mr. Martin said that the applicant is meeting the Community Design element of the EAMP by complying with the 60% open space requirement in the Special Design Area; providing greenways; and respecting the existing natural treed and drainage areas.

After evaluating this plan with regard to the requirements for EAMP compliance, the staff was able to find that the proposed development plan is in compliance, for the following reasons:

1. The proposed EAR-1 and EAR-2 residential densities of 2.99 and 3.57 units/acre are, respectively, in compliance with the future land use element of the EAMP.
2. The development uses the site topography and trees on the site to create distinct neighborhoods.
3. The hierarchy of street widths will promote slower traffic movements in the new neighborhoods, while still serving the functionality of an inter-connected street system.
4. The reconfiguration of the Special Design Area utilizes the 60% common open space area as required by the EAMP.
5. The developer has constructed the necessary sanitary sewer trunk lines in order to serve the areas proposed for residential development at this time. Additional trunk lines are expected to be built as required as development progresses.
6. The proposed detention shall be constructed in compliance with the EAMP Stormwater Management Plan.

Petitioner Representation: Rory Kahly, EA Partners was present representing the petitioner. He submitted into the record the required photograph of the sign posted on for this property and the affidavit of such.

Mr. Kahly stated that the petitioner is in agreement with the staff's revised conditions for approval of this plan. He noted, with regard to new condition #13, that the required geotechnical report for the sinkhole had been submitted to the Environmental Planner. The affected lot numbers, however, should be Lot 53, rather than Lots 90 and 91. With regard to new condition #11, Mr. Kahly said that the initial plan submission did not include a mid-block access to the greenway system. This revised plan, however, does depict a mid-block access easement to the greenway area, and the applicant would be agreeable to setting aside the area for the easement, rather than encumbering two lots with non-buildable areas.

Citizen Support: Susan Enlow, president of the Greenbrier Neighborhood Association, stated that that group had been working with the applicant for nearly a year, and had made good progress. She said that the Greenbrier residents appreciated the applicant's efforts in working to achieve a design that was compatible with their neighborhood.

Ms. Enlow stated that the Greenbrier residents had been assured repeatedly that there would be no direct access from the proposed development to Walnut Grove Lane. She asked if any of the conditions for approval of the plan would restrict access in that fashion, and stated that it was important to the residents of both Greenbrier and the adjoining Walnut Grove Estates neighborhood that a note be added to the plan to restrict access to Walnut Grove Lane.

Petitioner Representation: Bill Lear, attorney, was present representing the petitioner. He stated that the petitioner had no objection to the addition of such a condition to the plan. He added that there was a specific note on the original plan that

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restricted access from the proposed development to Walnut Grove Lane. There was some confusion as to whether the road is called Walnut Grove Lane or Deer Haven Lane, but the petitioner is agreeable to restricting access to whichever one is the most appropriate. Mr. Lear added that there is a special provision in the Expansion Area Master Plan, and in Article 26-A of the Zoning Ordinance that prohibits access to Walnut Grove Lane and Deer Haven Lane.

Commission Questions: Mr. Owens asked, with regard to condition #11, if it should be changed to read "resolve." Mr. Taylor answered that the petitioner had proposed a solution that was somewhat different from the staff's suggestion, but it was acceptable to the staff. Mr. Owens asked if it would be acceptable to add a new condition #15 to denote no access to Walnut Grove Lane or Deer Haven Lane. Mr. Lear responded that the petitioner would be agreeable to that condition.

Motion: A motion was made by Mr. Owens and seconded by Mr. Craves to approve DP 2011-41, subject to the first 10 conditions as listed in the revised staff recommendation; changing #11 to read, "Resolve the details of the greenway connection at Lots 391 & 392;" adding a new condition #15 to read, "Denote: No vehicular access to Walnut Grove Lane or Deer Haven Lane;" and finding that this development plan is in agreement with the Expansion Area Master Plan, for the reasons provided by staff.

Discussion of Motion: Ms. Richardson asked if condition #13 needed to be changed to reflect the correct lot numbers. Mr. Taylor answered that the plan did not specify on which lots the sinkhole was located. It was the staff's intent for the plan to denote the extent of the sinkhole, whichever lots might be included. He stated that the Commission could choose to delete the words, "on Lots 90 & 91" from condition #13.

Amendment to Motion: Mr. Owens amended his previous motion to delete "on Lots 90 & 91" from condition #13; Mr. Craves agreed to this amendment of the motion.

Action: Mr. Owens's amended motion carried 8-0 (Brewer, Copeland, and Holmes absent).

3. DP 2011-56: LEDERER PROPERTY (AMD) (8/9/11)\* - located at 312 North Limestone Street.  
(Council District 1) **(Wheat and Ladenburger)**

Note: The Planning Commission postponed this plan at the June 9, 2011, meeting. The purpose of this amendment is to add an access point, increase the building square footage, revise the parking and relocate the dumpster.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree protection plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Waste Management's approval of refuse collection.
7. Document encroachment permit for existing and proposed improvements on Lake Alley, prior to certification of plan.
8. Denote new access to Third Street as "exit only."
9. Remove the word "proposed" from right-of-way on Lake Alley.
10. Denote Board of Architectural Review's approval prior to certification of plan.

Staff Presentation: Mr. Martin presented a rendering of the amended final development plan, noting that the structure, which was formerly known as Whitehall Funeral Chapel, is currently being used for the Carrick House event facility, with an addition at the rear to accommodate banquets. He briefly oriented the Commission to the location of the subject property at the corner of East Third and North Limestone Streets. The property currently has access via a circular drive to North Limestone Street, and an access to the rear, onto Lake Alley, which includes a parking lot.

Mr. Martin stated that the Planning Commission discussed the scope of the changes to this plan at their meeting two weeks ago, ultimately deciding to recommend it for postponement. He displayed the currently approved plan for the property, in order to help the Commission understand the proposed amendments to the plan. Referring to the current plan, Mr. Martin noted the location of an open courtyard, which has since been enclosed, resulting in an addition of approximately 140 square feet to the structure. The approved patio, which was originally depicted with notched edges, has been squared off in order to provide for additional patio space. The current plan also denotes a building envelope, to which a small "bump-out" has been added, as well as a new location for the dumpster, which was originally proposed to be located in the service driveway. Mr. Martin stated that the change in the dumpster location had been the topic of considerable discussion by the Planning Commission at their meeting two weeks ago. At that meeting, the petitioner had proposed to remove the driveway access to Third Street; now, the petitioner is proposing to maintain that access point, as well as to locate the dumpster in the right-of-way of Lake Alley.

Mr. Martin stated that, since this plan was postponed two weeks ago, the staff has met with representatives of four LFUCG divisions in order to try to resolve the issues. After meeting with the Planning staff, the staff of the Division of Traffic Engineering determined that, should the access point to Third Street remain, it should be used as either an en-

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trance or an exit, but not both. Following a visit to the site, the staff of Traffic Engineering believes that access would function best as an entrance only, which was also the recommendation of several of the Planning Commission members at their meeting two weeks ago.

With regard to the proposed placement of the dumpster in the right-of-way of Lake Alley, Mr. Martin stated that several of the Planning Commission members had expressed concern about the proposal, which was shared by the staff of the Division of Waste Management. Condition #7 for approval of the plan refers not only to the location of the dumpster, but also to some pavement improvements that have been made to a portion of Lake Alley. The staff of the Division of Waste Management indicated that they had met with the applicant several weeks ago in order to discuss alternatives for the dumpster location. Following that meeting, they informed the staff that the proposed location of the dumpster in the Lake Alley right-of-way would not be the optimum location, and an encroachment permit would be required in order to do so.

Mr. Martin said that the staff had also met with the Division of Historic Preservation, since the Board of Architectural Review will be required to approve any changes to the property prior to certification of the plan. The applicant went before the BOAR on the evening prior to this meeting, where all of the proposed changes were approved, with the exception of the proposed location of a garage door that would face North Limestone Street.

In a further attempt to clarify some of the issues on the subject property, the staff also met with the Division of Building Inspection. The staff learned that there is an existing Certificate of Occupancy for the original Whitehall Chapel portion of the building; however, no such certificate has been issued for the banquet hall portion of the building. After the building inspector discovered the discrepancies between the approved plan and the actual conditions in existence on the site, the applicant was informed that it would be necessary to either make the site comply with the approved plan, or bring an amended plan before the Planning Commission for their approval.

Mr. Martin stated that the staff had distributed a revised recommendation to the Commission members prior to this meeting, with the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree protection plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Waste Management's approval of refuse collection.
7. Document encroachment permit for existing and proposed improvements on Lake Alley, prior to certification of plan.
8. Denote new access to Third Street as "~~exit~~ entrance only."
9. Remove the word "proposed" from right-of-way on Lake Alley.
10. Denote Board of Architectural Review's approval prior to certification of plan.
11. Denote the dumpster location on the site (not on the Lake Alley right-of-way).

With regard to condition # 11, the staff believed it would be more appropriate to require the location of the dumpster on the site somewhere other than in the Lake Alley right-of-way.

Commission Questions: Ms. Roche-Phillips asked if bollards had been installed in the area where an encroachment permit would be required on Lake Alley. Mr. Martin responded that there are two bollards in place at the end of Lake Alley; an encroachment permit will be required if the petitioner chooses to retain them in that location. He noted that the petitioner had also done some pavement work on the driveway, for which they should have obtained an encroachment permit.

Mr. Owens asked if any part of the patio, or the wall surrounding it, was in the Lake Alley right-of-way. Mr. Martin answered that the patio area does not encroach into the alley.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the majority of the staff's recommendations, but would request the Commission's further consideration with regard to the dumpster location. The petitioner is currently involved in discussions with several LFUCG divisions in order to determine the most appropriate location for the dumpster, and has suggested several alternatives. The petitioner would request that condition #11 be changed in order to allow the petitioner to locate the dumpster to be located off site, since one of the locations under consideration is the parking lot off of Martin Luther King adjacent to Lake Alley.

Mr. Nicholson displayed several photographs of the subject property, addressing some of the concerns that the Commission had about the proposed plan at their meeting two weeks ago. With regard to the Third Street access to the property, the petitioner has striped it for entrance only, based on the Commission's concerns and the recommendations of the Traffic Engineering staff. Commission members had expressed some concerns about the headlights of vehicles exiting the property via that access becoming a nuisance for the properties across the street, which should be addressed by requiring that cars use that access as an entrance only ingress.

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With regard to the additional building square footage, Mr. Nicholson said that most of that square footage came from the "bump-out" near the door that the BOAR requested be removed. He noted that that square footage was added based on conversations with the Health Department, noting the need for an additional corridor to service the food preparation and service areas, since the existing corridor was the pedestrian access for the guest restrooms. Based on the recommendations of the Health Department, the petitioner relocated the restrooms to the south in order to accommodate an extra corridor from the food preparation area to the banquet facility. Due to the construction of that extra corridor, the petitioner realized that it would be necessary to enclose a corner area in order to prevent banquet workers from having to exit the building with trays of prepared food. Mr. Nicholson stated that an emergency exit door was originally proposed in that area, but the petitioner relocated it to meet the necessary fire code requirements. All of those issues combined were the basis for the addition of square footage that was not included on the approved plan.

Mr. Nicholson displayed a photograph of the original dumpster location on the subject property, and noted that it could still be located there. The petitioner believes, however, that that is not the optimal location for the dumpster, and the staff of the Division of Waste Management agrees. There are two windows located in one of the main banquet rooms that currently overlook the dumpster site; in addition, two HVAC intake vents are also located in that area. The petitioner would prefer to move the dumpster from that location for aesthetic reasons, and also to prevent dumpster odors from entering the banquet rooms. The petitioner's preferred location for the dumpster is on the Lake Alley right-of-way. If the Commission chooses not to allow the dumpster in that location, the petitioner is prepared to either purchase the necessary right-of-way, or start the process to have LFUCG abandon their interest in that right-of-way. Mr. Nicholson stated that some paving had been done on Lake Alley, because it was in poor repair and the petitioner believed that it would not be able to accommodate the additional traffic generated by the activities at the Carrick House; but the patio does not currently encroach into the right-of-way. Should the Commission determine that the dumpster should not be located in the Lake Alley right-of-way, the petitioner will remove the bollards that were placed there. Mr. Nicholson noted that the petitioner did not do the paving work in preparation for the dumpster being located in the alley, but because he believed that it needed to be done. He said that the former dumpster location was inadequate because it was accessed via the second entrance on North Limestone Street. The petitioner widened that access at the request of the Division of Waste Management, but it is still difficult for large solid waste vehicles to navigate there. The petitioner contends that Lake Alley would provide a straight access point to the proposed dumpster location. He has also considered locating the dumpster off site, which would be accessed via an alley off of Lake Alley and was previously approved for additional parking. Mr. Nicholson stated that the petitioner has not received any negative feedback from the various LFUCG divisions involved, and reiterated that he is in agreement with the staff's recommendations, with that one exception.

Commission Questions: Ms. Blanton asked for clarification as to whether or not the Division of Waste Management was willing to approve the dumpster location on Lake Alley. Mr. Nicholson answered that that was not their preferred location, but it was preferable to the originally proposed location. Ms. Blanton asked if the Division of Waste Management suggested any alternative locations for the dumpster. Mr. Nicholson responded that they believed that the Martin Luther King property location was also discussed. Ms. Blanton asked if the banquet hall was currently in use. Mr. Nicholson answered that he did not know, and noted that he had not attended any banquets there. He added that he was aware that there was no permanent Certificate of Occupancy issued for that portion of the facility, but he did not know if a temporary CO existed to permit that use. Ms. Blanton stated that it appeared that several LFUCG divisions had been involved for a number of months with this issue, because the applicant did not follow the proper procedures, and she suggested that steps be taken to ensure that this did not happen again.

Mr. Owens said that he concurred with Ms. Blanton. He added that it would have been simpler and less time-consuming for the applicant to simply follow the proper procedures from the outset, which would have eliminated many of these delays to the project. Mr. Owens stated that, at this point, he would not support the location of the dumpster on Lake Alley. He asked, with regard to the dumpster location, if the Division of Traffic Engineering was concerned about the required screening interfering with turning movements on the subject property. Mr. Neal responded that it was his understanding that, if the petitioner installs the required screening around the patio, Solid Waste vehicles will not be able to make the turn in order to reach the dumpster. Mr. Owens asked, with regard to the access point recommended to be entrance-only, if the striping designating it as such would be visible from the parking lot, since the lot is higher than the driveway; and what else could be done at that location to identify it as entrance-only. Mr. Neal answered that more arrows could be added. Mr. Owens asked if curbing or an island could be added. Mr. Neal responded that curbing or a landscaped island could be installed, which could make the access more readily identifiable as entrance-only.

Ms. Blanton asked, with regard to Mr. Neal's comment that the required patio screening could prevent Solid Waste trucks from maneuvering on the property, if that was because the patio had been enlarged beyond the size depicted on the approved plan for the property. Mr. Neal answered that the enlargement of the patio was a contributing factor. He added that, if the bollards were moved, the trucks could possibly make the turn. Mr. Nicholson stated, with regard to the expansion of the patio, that the primary reason for the expansion was to save a large tree that the petitioner had initially thought would not be salvageable.

Ms. Beatty asked Mr. Nicholson to clarify the location of the Martin Luther King property to which he had referred as an alternate location for the dumpster. Noting that that area would be just off the area depicted on the rendered develop-

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ment plan, Mr. Nicholson clarified the location of that property, which forms a 90-degree turn in Lake Alley. He added that there are three houses and a violin store near that location.

Mr. Owens asked if the petitioner would be agreeable to the addition of a note on the plan requiring the petitioner to add signage and/or curbing or an island in order to make the entrance-only access more easily identifiable. Mr. Nicholson answered that the petitioner would be agreeable to the addition of signage, but he could not address the question of constructing additional curbing or an island.

Ms. Beatty asked if it would be appropriate to change condition #11 to read "resolve" the dumpster location. Ms. Richardson responded affirmatively, as there was not currently a motion on the floor.

Ms. Roche-Phillips asked how far away the Martin Luther King property is from the existing access to the property, and whether it would create a conflict based on the spacing criteria. Mr. Nicholson responded that he could not address the spacing criteria, but he believed that that proposed location for the dumpster is approximately the width of two houses away from the structure. Ms. Roche-Phillips said that she was concerned about the noise of trucks accessing the dumpster so near the existing residences, and about the dumpster being located too far away from the structure.

Mr. Cravens asked if the original dumpster location was an approved one. Mr. Martin answered that the original dumpster location was approved, and the plan was certified, which required all of the necessary sign-offs, including the Division of Waste Management. Mr. Cravens stated that he believed the dumpster should be retained in its original location. With regard to the applicant's concerns about that location, Mr. Cravens said that the dumpster could be screened from the banquet facility windows, and odors could be prevented through the use of diverters. He noted that the dumpster would look much worse located directly adjacent to the patio. Mr. Nicholson stated that the petitioner would not be in support of providing the dumpster at that location, and that the Division of Waste Management was concerned that it would be difficult for their large trucks to access that location.

Ms. Blanton stated that she would be in favor of Mr. Cravens' suggestion to retain the dumpster in its original location, noting that the Division of Waste Management did not have concerns originally, or they would not have signed off on the certification of the plan. She said that, if the applicant has made unapproved changes to the property that necessitated the relocation of the dumpster, they should be required to restore the property to the configuration on the approved plan. She said that should be part of the motion on this plan if the other Commission members were so inclined.

Department of Law Comments: Ms. Boland stated that, since the applicant's BOAR hearing had been held after the revised conditions for approval were drafted, she would suggest that, since the BOAR did not approve the addition of the garage door, the following language should be added to the end of condition #10: "with any changes required by the BOAR." She said that that would eliminate the appearance of any conflict between the BOAR decision and the Planning Commission decision.

Discussion: Mr. Owens stated, with regard to the question of whether the entire banquet facility was currently in use despite the lack of a Certificate of Occupancy for the addition, that it was his understanding that the entire facility was occupied on the evening prior to this meeting. He noted that he was disturbed that the entire facility was in use, and concerned that the applicant did not follow proper procedures; but he would be willing to make a motion for approval in order to allow the work on the property to move forward.

Motion: A motion was made by Mr. Owens and seconded by Ms. Beatty to approve DP 2011-56, with the first seven conditions as listed on the revised staff recommendation; adding "and resolve signage with the Division of Traffic Engineering" to condition #8; adding "with any changes required by the BOAR" to condition #10; and changing condition #11 to read: "Denote the dumpster location on or off the site (not in the Lake Alley right-of-way)."

Amendment to Motion: Ms. Blanton moved to amend Mr. Owens's motion, in order to change condition #11 to read, "Denote the dumpster location in the site in its initially approved location." She noted that she would also like the petitioner to be required to remove part of the patio if that was necessary to restore the dumpster to its original location. Mr. Cravens seconded the motion to amend the original motion.

Discussion of Amended Motion: Mr. Cravens asked Ms. Blanton to clarify her amendment to the motion. She explained that she was concerned that the petitioner's reason for the relocation of the dumpster was that the originally approved patio was smaller, and that the petitioner discovered, upon the unapproved enlargement of the patio, that the dumpster would have to be relocated. She intended for her amendment to require that the petitioner accommodate the needs of the Division of Waste Management, even if it necessitated removal of a portion of the patio. Mr. Cravens stated that the approval of Waste Management would be required for the dumpster to be located anywhere other than the location depicted on the currently approved plan, so their approval is implicit.

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Department of Law Comments: Ms. Boland stated that condition #6 requires the approval of the Division of Waste Management prior to the certification of the plan; so if any changes would need to be made to allow their access, it should be covered under that condition.

Amendment to the Amendment of the Motion: Ms. Blanton amended her amendment to require that the dumpster be located in its originally approved location. Mr. Cravens seconded the amendment to the motion, and it carried 8-0 (Brewer, Copeland, and Holmes absent).

Action: Mr. Owens's motion, as amended by Ms. Blanton, carried 8-0 (Brewer, Copeland, and Holmes absent).

4. DP 2010-22: TACKETT PROPERTY (KROGER PLAZA) (AMD #11) – located at 1650 Bryan Station Road at the corner of New Circle Road. (Council District 6) **(The Roberts Group)**

Note: The purpose of this amendment is to add 15, 269 square feet and a drive-through window, and to revise the off-street parking requirements.

This plan was approved by the Planning Commission on May 13, 2010, subject to the requirements listed below, and a finding that the proposed construction "is in compliance with Big-Box Design Guidelines." The approval granted by the Planning Commission has since expired.

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).
10. Resolve the easement conflicts with the proposed addition prior to plan certification.
11. Relocate the internal sidewalk from Phase III to the approval of the Bike & Pedestrian Planner.
12. Complete sidewalk connection to Bryan Station Road.

The Staff Recommends: **Reapproval**, subject to the same conditions required by the Commission on May 13, 2010.

Staff Presentation: Mr. Emmons presented the development plan, briefly orienting the Commission to the location of the subject property at the intersection of New Circle Road and Bryan Station Road. He that this plan, for the redevelopment of the Kroger Shopping Center and expansion of the Kroger store, was originally approved in May of 2010. Since the proposed expansion of the Kroger crossed several easements, the petitioner was required to construct the necessary facilities in order to relocate the easements. Mr. Emmons stated that those easements had been constructed, and that this plan was on the Urban County Council docket for release of those easements following this meeting. The Planning Commission approval, however, expired approximately one month ago. The applicant has requested reapproval of this plan in order to proceed with the redevelopment of the Kroger Shopping Center, subject to the conditions required by the Commission at the time of the original approval.

Petitioner Representation: Bob Cornett, The Roberts Group, was present representing the petitioner. He stated that it had taken a considerable amount of time to obtain the necessary easement releases, and he was surprised to find that the approval for this plan had passed the 12-month certification deadline by about a month. Mr. Cornett said that all of the necessary plans for construction of the Kroger expansion were in place, but they could not proceed without a certified development plan.

Action: A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, and carried 8-0 (Brewer, Copeland, and Holmes absent) to approve DP 2010-22, subject to the 12 conditions as listed on the addendum to the agenda.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, June 2, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Carolyn Richardson, Lynn Roche-Phillips, and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations

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- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

**B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

**1. THUNDER PROPERTIES, LLC, ZONING MAP AMENDMENT & COONS PROPERTY, UNIT 11, LOT 2**

- a. MAR 2011-7: THUNDER PROPERTIES, LLC (6/23/11)\* - petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 2.55 net (3.05 gross) acres, for property located at 4268 Saron Drive (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 10) recommends Professional Service (PS) future land use for the subject property. The petitioner proposes to rezone the subject property, which is currently vacant, in order to broaden the allowable uses to permit restaurants and retail sales.

The Zoning Committee Recommended: **Approval**.

The Staff Recommended: **Disapproval**, for the following reasons:

1. The requested rezoning to a Neighborhood Business (B-1) zone cannot be found to be in agreement with the 2007 Comprehensive Plan, which recommends Professional Service (PS) future land use for the subject property. The Professional Office (P-1) zone was approved by the Urban County Council in 2001, and Professional Service uses were deemed to be appropriate during the 2001 Comprehensive Plan update to provide a land use buffer between the nearby retail to the north and the residential areas to the south.
  2. The proposed B-1 zone is not appropriate for the subject property for the following reasons:
    - a. The existing zoning serves as an appropriate transition in land use between the shopping center and the existing residential uses along Fiddler Creek Way and Chas Circle.
    - b. Neighborhood business uses are more intrusive to the neighborhood than office uses, especially in terms of hours of operation, noise and deliveries by trucks.
    - c. The current zoning allows for a good mixture of land uses in the area (high density residential, a shopping center, a day care center, and medium density residential uses all within the 400-foot notice area) without infringing on the residents of this established neighborhood.
    - d. Retail and restaurant establishments are already plentiful in the area, including the two Tates Creek Shopping Centers with eight restaurants, and two neighborhood business areas at Clearwater Way and Saron Drive, and Duval Street and Tates Creek Road. Therefore, there is not a compelling need for additional commercial uses in this area.
  3. There have been no significant unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2007 that would support B-1 zoning and more intense use than the current zoning allows for the subject property.
- b. ZDP 2011-21: COONS PROPERTY, UNIT 11, LOT 2 (6/23/11)\* - located at 4268 Saron Drive & 960 Chas Drive.  
(Barrett Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1 and P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.

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3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Correct note #1.
9. Resolve easement and pond relocation for buildings C, D and E at the time of the Final Development Plan.
10. Addition of street tree information from previous plan.
11. Correct storm water easement dimensions from 15' to 20' per plat.

Zoning Presentation: Mr. Sallee presented the staff report, briefly orienting the Commission to the location of the subject property near Bates Creek Road and its signalized intersections with Man O' War Boulevard and Saron Drive. He said that the subject property is directly to the south of the Bates Creek South Shopping Center. It is at the corner of Saron Drive, which is a collector street, and Chas Drive, which is a loop street connecting Saron Drive with Duval Street. The subject property is approximately half of a larger tract of land bordered on three sides by the aforementioned streets, and on the fourth side by R-3 zoning which is developed mostly as duplexes. The subject tract is zoned P-1, and the petitioner does not propose to rezone its eastern-most portion. The western half of the property is proposed for rezoning to B-1, with several proposed conditional zoning restrictions.

Mr. Sallee displayed several photographs of the subject property and of the surrounding area, noting that the property directly across Saron Drive from this tract is in a residential zone. There is also a very large floodplain area associated with Hickman Creek, which is located near the subject property. There are two cul-de-sacs to the south of the property, which are developed with duplex units; a single-family subdivision, also to the south; and an apartment complex to the southeast. Directly across Saron Drive is an existing daycare center, which is in a residential zone and has been approved by the Board of Adjustment as a conditional use.

Mr. Sallee stated that the 2007 Comprehensive Plan recognizes the existence of the Bates Creek South Shopping Center; the child care center across the street as a Semi-Public Use; and recommends Professional Service land use for the subject property. The residential uses nearby are recommended for Medium Density Residential use, for the duplexes, the single-family area, and the vacant property directly to the east and across Saron Drive from the subject property. Mr. Sallee said that, in 2001, this property was proposed to be designated for Retail Trade & Personal Service land use. However, the staff recommendation at that time was that the property be recommended for Professional Service use instead. The Planning Commission agreed with that recommendation in its adoption of the 2001 Comprehensive Plan, which was the immediate predecessor to the current Comprehensive Plan. The subject property has been zoned P-1 for almost 10 years, as a result of that action in 2001.

Mr. Sallee stated that the staff could not find that the proposed B-1 zone is in agreement with the Professional Service land use recommended by the Comprehensive Plan. Therefore, they reviewed the other possible findings to determine if this request could be approved. The staff first considered whether the proposed B-1 zone was appropriate for the subject property. The staff did not agree with the petitioner's justification that a B-1 zone was more appropriate at this location, primarily because a commercial office could provide a good step-down between the nearby arterial roadway and existing residential uses. The staff also believes that there are plentiful retail and restaurant uses in this area, so they did not feel that there was a compelling need for additional commercial land use. Mr. Sallee said that the staff also evaluated whether there had been any unanticipated changes of a physical, social or economic nature in the area that were unanticipated by the 2007 Comprehensive Plan, but could find none. For those reasons, the staff recommended disapproval of this request at the Zoning Committee meeting a few months ago. Since that time, and following a meeting with the staff, the petitioner proposed conditional zoning restrictions for the property. At their meeting earlier this month, the Zoning Committee reviewed the application along with the proposed conditional zoning restrictions, and they recommended approval of this request. In their report, the staff recommended disapproval of this request, for the reasons listed on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary development plan, which covers the entire property, although only a portion of the property is proposed for rezoning to B-1. He said that the petitioner is proposing to construct two buildings, approximately 30,600 square feet in size, with associated parking and two accesses to Chas Drive. The petitioner is also proposing to construct three buildings on the portion of the property that is not proposed for rezoning, for a combined building square footage of just over 70,000 square feet. Mr. Martin noted that this is a preliminary development plan; there can be no development on the property until a final development plan is approved by the Planning Commission.

Mr. Martin stated that the Subdivision Committee recommended approval of this plan, having reviewed it as if the proposed B-1 zoning was already in place. He said, with regard to condition #9, that there is an existing easement and drainage area that was established on a portion of the subject property. Some off-site stormwater work was recently done in conjunction with a nearby development at Bates Creek Road and Duval Street. When that work is completed, the easements will be revised on the subject property, and the conflict will no longer exist. Mr. Martin noted that all of those issues will be required to be resolved prior to certification of a final development plan for the

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property. With regard to condition #11, the easement was improperly noted as being 15' in size, when it should have been 20'.

Petitioner Presentation: John Talbott, attorney, was present representing the petitioner. Referring to an exhibit booklet that had been distributed to the Planning Commission members, he noted that the petitioner contends that there are several Comprehensive Plan Goals and Objectives that support this rezoning request, and that those were included in the exhibit. He read into the record of the meeting the following excerpts from the Goals and Objectives:

**“Goal 7, Objective H:** Promote established employment areas at locations where public facilities are adequate for the anticipated uses, which are accessible to arterials and employees ...

**Goal 11:** Provide diverse business and employment opportunities for Lexington-Fayette County.

**Goal 11, Objective C:** Encourage retention and expansion of existing local industries and businesses.

**Goal 14, Objective I:** Develop communities and neighborhoods that are self-sustaining by enabling a range of services and activities ...

**Goal 15, Objective F:** Plan for the establishment of retail uses with a neighborhood focus and character.

**Goal 15, Objective K:** Promote human-scale, bicycle, and pedestrian-friendly neighborhoods.

**Goal 15, Objective N:** Review existing land use and zoning and amend the zoning map as necessary to protect neighborhoods, to encourage appropriate density ...

**Goal 16, Objective E:** Plan locations of residential and commercial land uses carefully to provide appropriately sized and designed facilities that are compatible with and best serve their surrounding neighborhoods.”

Mr. Talbott stated that Clearwater Commons, a small retail development constructed in 2006, is located near the subject property on Saron Drive. It is an approximately 30,000 square-foot building that is zoned B-1. The tenants in Clearwater Commons, which is close to being fully occupied, include fitness studios, doctors' offices, a hair salon, and an insurance office. The Bates Creek Centre development, located across Man O' War Boulevard at its intersection with Bates Creek Road, includes a large Kroger store, and various small-shop spaces. Many of those smaller spaces are proposed to be eliminated, however, due to a planned 36,000 square-foot expansion of the Kroger store. Mr. Talbott said that Bates Creek Centre is approximately 95% full; and since several small tenants will need to seek alternate accommodations, demand for such commercial space in the area should increase. The Bates Creek South Centre, which is anchored by a Wal-Mart grocery store, is currently 100% occupied. Mr. Talbott noted that retail vacancy in the vicinity of the subject property is far below both local and national averages.

Mr. Talbott stated that the subject property was rezoned to P-1 at the owner's request 10 years ago. The property has been vacant for 10 years, during which time there was no indication of any demand for professional office space in the area. The petitioner contends that there is excess P-1 space in the community, and believes that the proposed rezoning of the subject property to B-1 could create a variety of new opportunities for the community. The petitioner is proposing to construct two, two-story buildings, with office space above and retail areas on the first floor, in order to accommodate businesses such as bakeries, coffee shops, liquor stores, and other uses that could be desirable to the nearby neighborhoods. Mr. Talbott said that both Kroger and Wal-Mart have clauses in their leases that insist on extensive restrictions in any shopping center in which their stores are located, including the elimination of bakeries, liquor stores, and fitness centers. By approving this proposed zone change, the Planning Commission could create an opportunity for those restricted types of businesses to locate near the customers who use them.

Mr. Talbott said that Cheryl Johnston, CMI Properties, had performed a comprehensive market analysis, which was submitted for the record. Ms. Johnston concluded that the lack of small shop space in the vicinity of the subject property is of particular concern, given the high and increasing population density in the area. In a letter summarizing the analysis, Ms. Johnston noted that the current P-1 zoning has been in place for 10 years, and she believes that there is a significant weakness in the market for professional office development and a need for additional retail space.

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Mr. Talbott stated that the petitioner had proposed conditional zoning restrictions for the subject property, in addition to a 15' foot landscape border along the boundary with the adjoining residences, a 6' fence, and a vegetative buffer. He added that the petitioner had attempted to contact the management of the three neighborhood associations in the vicinity of the property in order to discuss the proposed rezoning, but had received no response.

Commission Questions: Mr. Owens stated that he appreciated the petitioner's effort with regard to the proposed conditional zoning restrictions. He said that he was concerned, however, about the possibility of a restaurant with live entertainment and dancing, which is a conditional use in the B-1 zone, locating on the subject property near adjoining residential uses. Mr. Owens asked if the petitioner would be willing to prohibit such an establishment via conditional zoning. Mr. Talbott answered that the petitioner did not want to eliminate too many potential tenants, and noted that any restaurant with live entertainment would have to be approved for a conditional use permit by the Board of Adjustment.

Mr. Owens asked if it would be possible to add restaurants with live entertainment to the list of uses prohibited via conditional zoning. Ms. Boland answered that the petitioner had listed three conditional uses that, under conditional zoning restrictions, would not be allowed even with the approval of the BOA. She said that, from a legal standpoint, the Planning Commission could choose to either add to or subtract from the list of conditional uses that would be prohibited.

Mr. Owens asked Mr. Talbott if the petitioner would be willing to add restaurants with live entertainment to the list of prohibited uses. Mr. Talbott responded that the subject property is abutted to the rear by a shopping center, a P-1 parcel, and a daycare center, so it is fairly isolated from residential uses. Mr. Owens asked if there was a location on the subject property where a restaurant with live entertainment could be located, outside of the required 100' buffer from residential zones. Mr. Talbott answered that he was unsure. Mr. Owens asked if the petitioner would be willing to restrict such restaurants, to which Mr. Talbott agreed.

Mr. Wilson said that he voted against the motion for approval of this rezoning request at the Zoning Committee meeting, and added that he was somewhat conflicted in his decision. He stated that he had visited the site, and found it to be very unsightly after so many years of being vacant. With regard to Mr. Talbott's statement that the petitioner had attempted to contact the nearby neighborhood associations, he asked if the petitioner had received any response to those attempts. Tony Barrett, Barrett Partners, answered that that was correct. He said that he had contacted the property management company and obtained contact information for the neighborhood association president. He sent an email and received no response, so he contacted the property manager again to ask if there was any other means by which to contact the association president. The property manager then forwarded Mr. Barrett's communication to the association president and board members, again with no response. Mr. Wilson stated that the area that is currently occupied by the Wal-Mart grocery has turned over many times in recent years, and he believed that it would become vacant again soon, which would result in a lot of empty retail space in the area of the subject property. Mr. Barrett commented that the original tenant in that space went out of business nationally, and noted that, since the location of the Wal-Mart grocery there, the shopping center has become more stable.

Cheryl Johnston, CMI Properties, stated that Mr. Wilson's concerns relate more to national retailers than the local operations in the area of the subject property. She said that one of the frequent complaints among commercial tenants in that vicinity is that rents are frequently considerably above market in the Bates Creek Centre. When a lease ends there, tenants often vacate the area in order to avoid an increase in rent. Ms. Johnston stated that most of the businesses that left Bates Creek South went out of business nationally; she said that all of the demographic information for this region indicates that growth trends are strong in the vicinity of the subject property. With the expansion of the Kroger store in Bates Creek Centre, several small commercial operations will be either forced out of their existing space, or unable to locate in that center due to restrictions placed by the Kroger company. Ms. Johnston added that Clearwater Commons has been very successful with several small local businesses and no major anchor.

Citizen Comment: There were no citizens present to comment on this item.

Staff Rebuttal: Mr. Sallee stated, with regard to Mr. Wilson's question, that the staff sent three formal neighborhood notices for this rezoning request, to the Pinnacle, Waterford, and Tanbark neighborhoods. The zoning change notification sign was also posted at this location three times. It is the staff's estimation that those forms of notification, combined with the required legal advertisement, generated only four phone calls to the Division of Planning office from residents in the area or via organized neighborhood associations.

Mr. Sallee said that the primary difference between the applicant's and the staff's point of view on this request has to do with whether the focus is on the business activity at Bates Creek Centre, or in the area closer to the site. Referring to the petitioner's exhibit listing the tenants of Bates Creek South and Clearwater Commons, Mr. Sallee said that, when the staff drafted their initial report in March, the space currently occupied in Bates Creek South by the Special Olympics organization was vacant. In Clearwater Commons, all of the uses listed, with the possible

exception of the hair salon, would also be permitted in a P-1 zone. That discovery made it very difficult for the staff to determine that P-1 zoning was not also appropriate at the location of the subject property.

Zoning Motion: A motion was made by Ms. Blanton and seconded by Mr. Cravens to approve MAR 2011-7, for the following reasons, and subject to the petitioner's proposed conditional zoning restrictions:

1. Although the proposed zone change is not in agreement with the Comprehensive Plan, the nearby Kroger expansion in a B-1 zone will effectively eliminate significant availability of smaller, neighborhood retail space which would be replaced with this zone change. That major expansion of the Kroger in what was intended to be a neighborhood business area is a change not anticipated by the Comprehensive Plan. As a result, the proposed zoning, B-1, is more appropriate than the current P-1 zoning, due to the need to replace the available space for small shops.
2. The proposed rezoning to a Neighborhood Business (B-1) zone will benefit the relevant area (i) by creating economic and employment opportunities for businesses needing small shop space to provide services for the adjoining residential areas and (ii) by replacing the small shop space that has been eliminated by the expansion of the premises occupied by Kroger located in the Bates Creek Centre in the proximity of the subject property.

The following uses shall be prohibited and the following landscape buffering imposed through conditional zoning:

Principal Uses:

Automobile service stations.  
Outdoor miniature golf or putting courses.  
Circuses and carnivals.  
Arcades, including pinball and electronic games.  
Pawnshops.

Accessory Uses:

The rental of trucks, trailers and related items.

Conditional Uses:

Self-service car washes.  
Mining of non-metallic minerals.  
Gasoline pumps available to the public without an employee on site.

Landscape Buffering:

A 15' minimum landscape buffer area including a 6' tall solid fence with a mix of evergreen trees, shade trees, and large shrubs to provide a dense screen adjacent to the R-3 zone.

Amendment to Motion: Mr. Owens stated that he would like to suggest the addition of restaurants with live entertainment and dancing to the list of prohibited uses proposed by the petitioner. Ms. Blanton was agreeable, as was Mr. Cravens. Ms. Blanton then amended her motion to include:

Prohibited Uses:

Restaurants with live entertainment and/or dancing.

Zoning Action: Ms. Blanton's motion carried, 8-0 (Brewer, Copeland, and Holmes absent).

Development Plan Action: A motion was made by Ms. Blanton, seconded by Mr. Cravens, and carried 8-0 (Brewer, Copeland, and Holmes absent) to approve ZDP 2011-21, subject to the 11 conditions as listed on the agenda.

*Note: Chairperson Richardson declared a brief recess at 3:53 p.m. The meeting reconvened at 3:58 p.m. Derek Paulsen left the meeting at this time.*

**2. DENNIS ANDERSON INV. 1700, LLC, ZONING MAP AMENDMENT & SHARKEY PROPERTY, UNIT 1, LOTS 9, 10 & 18 ZONING DEVELOPMENT PLAN**

- a. MARCV 2011-10: DENNIS ANDERSON INV. 1700, LLC (7/31/11)\* - petition for a zone map amendment from a Neighborhood Business (B-1) zone to a Professional Office (P-1) zone, for 2.70 net (3.43 gross) acres; and from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 2.31 net (2.69 gross) acres, for property located at 119, 124 and 125 Louie Place. A conditional use permit and a dimensional variance have also been requested with this zone change.

LAND USE PLAN AND PROPOSED USE

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\* - Denotes date by which Commission must either approve or disapprove request.

The 2007 Comprehensive Plan recommends Professional Services land use for the portion of the subject property on the east side of Louie Place (124 Louie Place), and Retail Trade and Personal Services use for the portion on the west side of Louie Place (119 and 125 Louie Place) subject to this request. The petitioner proposes a "swap" of P-1 and B-1 zoning, primarily to allow for a new extended-stay hotel, and automobile service center and tire retail sales establishment. The Planning Commission will consider a conditional use and a dimensional variance request in conjunction with the requested zone change.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. An equitable "swap" of P-1 and B-1 zoning is appropriate, and is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The 2007 Comprehensive Plan recommends Professional Services and Retail Trade and Personal Services future land use for the subject property, zoning for both of which are proposed.
  - b. The proposed rezoning would generally maintain the mixture of uses currently identified and recommended on the Sharkey Property by the Comprehensive Plan.
  - c. The properties are currently vacant, and the proposed swap will facilitate development of the property in a manner that does not compromise the intent of the Comprehensive Plan.
2. This recommendation is made subject to the approval and certification of ZDP 2011-54: Sharkey Property, Unit 1, Lots 9, 10 & 18, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED CONDITIONAL USE AND VARIANCE

REQUESTED CONDITIONAL USE

1. Extended-stay hotel

REQUESTED VARIANCE

1. Increase the height of a commercial building in a proposed B-1 zone (at 124 Louie Place) from 25' to 38'

The Staff Recommended: **Approval** of the requested conditional use, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed extended-stay hotel will appear more residential in nature than typical office and commercial buildings, in keeping with its surroundings, and will serve both residential and commercial uses in this neighborhood.
- b. This conditional use will have ample off-street parking, a landscaped parking lot, and sidewalks to connect the facility with other nearby land uses. It is anticipated that traffic will, generally like the nearby residential uses, leave the property in the morning and enter the property in the evening hours.
- c. All necessary public services and facilities, such as police and fire protection, are available and adequate for the proposed use.

The Staff Recommended: **Approval** of the requested height variance, for the following reasons:

- a. Granting the requested height variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The existing property where the height variance is sought is at a low point in the development, and is lower than the nearby shopping center and commercial outlots.
- b. Granting this variance will not result in an unreasonable circumvention of the Zoning Ordinance, as this building will be in a mixed-use development with taller buildings nearby. Taller residential and extended-stay hotel buildings are proposed in the vicinity, making the effect of this height variance minimal to the surrounding properties.
- c. The current site conditions with the existing streets and the low elevation of the lot in question are special circumstances that contribute to justifying an increase in the proposed building height.
- d. Strict application of the Zoning Ordinance would result in an auto-related service building that would be difficult to spot from the nearest highway. This would result in an undue hardship to the proprietor and to the general public.
- e. The circumstances of the requested variance are not the result of the applicant, as no construction has begun on the lot in question. The low elevation of the lot and the greater elevation of the adjacent shopping center are not the result of actions taken by this applicant.

This recommendation of approval is made subject to the following conditions:

1. Should the subject properties be rezoned to P-1 and B-1, as proposed, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction.
3. The parking lots and driveways for these buildings shall be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.

4. The final design of the parking lots, their access aprons to public streets, and the internal circulation on these lots shall be subject to review and approval by the Division of Traffic Engineering.
  5. Any outdoor pole lighting for these parking lots shall be of a shoebox or other design, so that light is shielded and/or directed away from all nearby residentially zoned properties so as to prevent disturbances to existing and future adjoining residents.
  6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- c. ZDP 2011-54: SHARKEY PROPERTY, UNIT 1, LOTS 9, 10 & 18 (7/31/11)\* - located on Sharkey Way, Louie Place and Hatter Lane.  
**(EA Partners)**

Note: The purpose of this amendment is to revise the zoning and the buildings for four lots.

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1 & P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
9. Correct lot coverage statistics on Lots 9 & 18.
10. Correct parking statistics on Lots 10A & 10B.
11. Denote maximum employees/shifts for extended-stay hotel use.
12. Denote construction access locations.
13. Denote the nearest stormwater detention area(s) off site.
14. Denote typical drive aisle widths on Lot 10A.
15. Denote the use on Lot A in site statistics.
16. Addition of purpose of amendment note.
17. Denote any approved conditional use or variance on plan.
18. Denote height of building.
19. Denote courtyard and pool dimensions.
20. Clarify proposed building square footage on Lots 10A & 10B.
21. Revise the proposed access to Louie Place to the approval of the Division of Traffic Engineering.
22. Denote the connection between Lots 10A & 10B.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property near the intersection of Leestown Road and New Circle Road. She said that the subject property is divided into two halves, located on the east and west side of Louie Place. The subject property is surrounded by developing apartments to the south; single-family homes to the southwest; business uses, including restaurants and service stores in the Towne Center area and fronting onto New Circle and Leestown Roads; several professional office buildings oriented toward Leestown Road; the Kroger shopping center to the southeast; the Town Branch Wastewater Treatment facility to the southwest; and the Meadowthorpe subdivision across Leestown Road.

Ms. Wade stated that the subject property was originally rezoned in 2002 as part of a mixed-use development for the Sharkey Property. She displayed several photographs of the subject property and surrounding area, noting the location of a 2009 rezoning on another portion of the property, where apartments are currently under construction; the treeline that provides a buffer between a portion of the subject property and the Meadowthorpe Shopping Center; and two of the buildings located in the Professional Office area near Leestown Road.

Ms. Wade said that the 2007 Comprehensive Plan recommends a combination of Professional Services and Retail Trade uses for the subject property, which is in agreement with the existing zoning. Professional Services land use is recommended for the area on the east side of Louie Place, and Retail Trade and Personal Services land use is recommended for the west side. The petitioner is proposing to "swap" the zoning on the parcels, which would not be precisely in agreement with the Comprehensive Plan's land use recommendation. The 2007 Comprehensive Plan recommends Highway Commercial land use close to New Circle Road; Medium Density Residential use for the apartments, townhouses, and single-family homes; and Warehouse and Wholesale land use for the area where apartments are currently being constructed.

Ms. Wade stated that the petitioner is proposing this zoning swap in order to construct an extended-stay hotel in the center of the property, which is bordered by Louie Place, Sharkey Way, and Hatter Lane; and uses that are allowed

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in the B-1 zone, including a restaurant and retail tire store, on the parcel to the east of Louie Place. The swap is proposed in order to allow the extended-stay hotel to be more of a focal point for the development, and to allow for more walkability to restaurants and stores for the guests of the hotel. In their review of this rezoning request, the staff considered that, despite the zoning swap, the land use relationships in the area would remain consistent, and that the subject properties are currently vacant, so no non-conformities would be created. In addition, the current mixture of land uses and zoning in the area would be maintained, and the subject parcels are nearly identical in acreage. The uses proposed along with this rezoning request still are consistent with the design concept that was presented by the petitioner at the time of the original rezoning of the Sharkey Property in 2002. Ms. Wade said that the staff is supportive of the extended-stay hotel because it has a residential component, which is more in agreement with the recommendation of the 2001 Comprehensive Plan for more residential uses on the subject property. She stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting that the petitioner is proposing a four-story extended-stay hotel with an indoor pool facility on the west side of Louie Place, and a tire store and restaurant to the east of Louie Place. This plan also proposes access to the subject property from Peabody Way, which is a private access easement, to the adjoining Meadowthorpe Shopping Center; and three accesses to the extended-stay hotel property.

Mr. Taylor stated that the Subdivision Committee recommended approval of this plan at their meeting three weeks ago. Subsequent to that meeting, the petitioner submitted a revised plan, which addressed several of the original conditions as part of their recommendation for approval. The staff prepared a revised recommendation based on the plan changes, copies of which were distributed to the Commission members prior to today's meeting.

Referring to the revised conditions for approval, Mr. Taylor said that condition #8 pertained to a note that is required by the Zoning Ordinance to be placed on each preliminary development plan; #9 requires the addition of a reference to the plan for any conditional use or variance that is approved for the subject property; #10 refers to an access easement that is required between Lots 10A and 10B, for which the petitioner has filed a final record plat; and #11 denotes the requirement of encroachment permits for the proposed indoor pool building. The 20' building line that runs along Louie Place in the area of the front of the proposed extended-stay hotel is also a utility easement. The proposed pool would encroach into that easement, so the staff is requiring that a note referring to the encroachment permits be added to this plan.

Conditional Use and Variance Presentation: Mr. Emmons stated that the petitioner had filed a conditional use request to allow the construction of the extended-stay hotel, which is proposed to contain 107 units, in the requested P-1 zone. Extended-stay hotels are defined by the Zoning Ordinance as being residential in nature, since each unit has its own kitchen. The Ordinance requires that extended-stay hotels rent at least 50% of their rooms for at least one week at a time.

Mr. Emmons stated that, in considering conditional use requests, the Commission must determine whether the proposed use is appropriate for the site, and ensure that the use will not be a nuisance to the nearby properties. The staff has found that the proposed extended-stay hotel is an appropriate use for the subject property, noting that the zoning swap will provide guests of the hotel with greater walkability to the restaurants and stores within the nearby shopping center.

With regard to the requested variance, Mr. Emmons said that the maximum height allowed in the B-1 zone is generally 25'. The petitioner is proposing to construct a taller roof for the sales portion of the tire store, while the service bays will be within the 25' height restriction. In their justification, the petitioner noted that the parcel on which the tire store is proposed to be located is approximately 8' – 10' below the elevation of the surrounding uses, and approximately 20' below Leestown Road. Mr. Emmons displayed two photographs of tire stores similar to the one that is proposed for the subject property, noting the architecture of a portion of the roofline that is raised above the remainder of the roof. He said that the staff is recommending approval of the conditional use and variance requests, for the reasons as listed in the staff report and on the agenda, subject to the conditions as listed.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He said that the petitioner believes that the proposed zoning swap will provide for a better design for the Townley Center development, and noted that the construction of the proposed extended-stay hotel and tire store will bring much-needed jobs to the Lexington area. A new building, which is proposed to contain Firehouse Subs and Orange Leaf yogurt stores, is also currently under construction in the area.

Mr. Murphy stated that Townley Center was designed as a mixed-use development, and currently has a good mix of different housing types with restaurants, shops, offices, and a hotel. He displayed a rendering of the entire development, noting that the owner of the tire store originally proposed to purchase the existing B-1 portion of the subject property. After the petitioner was contacted by an extended-stay hotel company that wished to construct a location in Townley Center, it was determined that the zoning swap would result in a more appropriate location for

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both the proposed tire store and hotel. Mr. Murphy stated that most extended-stay hotel guests are professional or technical people who are in town for business for a few weeks, or families who are considering a move to the area and are scouting out available housing. He said that, although extended-stay hotel units typically have kitchens, the guests are frequent users of restaurants as well. The petitioner contends that constructing the extended-stay hotel closer to the commercial center of the development will provide for more walkability for the guests, and will be an improvement for the overall development. Mr. Murphy said that the petitioner also contends that the proposed zoning swap is in agreement with the recommendations of the Comprehensive Plan, since it would maintain the recommended density and mix of uses for the area.

With regard to the requested conditional use, Mr. Murphy stated that the proposed extended-stay hotel would be complementary to both the residential and business uses in Townley Center. The proposed hotel should not contribute to traffic problems in the area, as guests will typically be traveling in the opposite direction of the drivers who visit the retail uses in the development during peak-hour times. Mr. Murphy displayed a photograph of the nearest residential use to the proposed hotel, which is a group of three-story townhouse units. The petitioner contends that the proposed four-story hotel will be similar in scale to those units, since they are fairly large structures.

With regard to the requested variance, Mr. Murphy noted that the development plan illustrates the significant grade change on the subject property, which necessitates the need for additional height for the proposed tire store. He noted that varying rooflines, such as are proposed for the tire store, also provide architectural interest to the shopping center as a whole.

Mr. Murphy stated that the petitioner had been in contact with representatives of the Meadowthorpe Neighborhood Association, who unanimously approved the proposed changes to Townley Center. The proposed rezoning was also presented to a representative of the Townley Park Neighborhood Association, and the petitioner received no negative feedback, despite the presence of objectors at this hearing. Mr. Murphy said that the petitioner believes that the proposed rezoning, conditional use, and variance will be an important contribution to the future success of Townley Center, and he requested approval.

Citizen Support: Jim Stone, Chair of the Meadowthorpe Design Review Committee, stated that, when the proposed rezoning was presented to the Committee, the 10 members who were present were unanimous in their support. Following that meeting, the Committee presented the changes to the full Meadowthorpe Neighborhood Association, who also voted to approve the request. Mr. Stone said that the petitioner has the full support of the Meadowthorpe Neighborhood Association.

Citizen Objection: Jean Settle, 172 Towne Center Drive, stated that, although the petitioner has met with representatives of Meadowthorpe Neighborhood Association, he had not met with the members of the Townley Park Neighborhood Association, because she had heard that they do not have political influence. Therefore, most of the Townley Park residents were not aware of the petitioner's proposed changes until May, and they had difficulty determining what the extent of those changes would be.

Ms. Settle said that, when the residents of Townley Park purchased their homes, they were led to believe that they were part of a "mixed-use, planned development residential neighborhood." The residents were also told that the area was intended to be neighborhood-oriented, with greenspace, walking trails, community gardens, and convenient businesses that fit into the design and scale of the community, to serve primarily the residents of Townley Park and Meadowthorpe. The neighborhood residents do not believe that the proposed extended-stay hotel and tire store would serve the needs of the petitioner, not the homeowners and residents of Townley Park.

Ms. Settle stated that many of the residents, who are already disillusioned with the neighborhood, believe that the proposed uses of the subject property will adversely affect the character and quality of the neighborhood. The hotel is proposed to be 60' tall, which is significantly larger than the current tallest structure in the area, which is 43' in height. Since all of the residences are located downhill from the subject property, the residents are concerned that it will overshadow their homes and provide an unsightly view. The residents are also concerned that the extended-stay hotel will compete with the existing Holiday Inn, which could go out of business as a result. Ms. Settle said that, when the residents of the single-family homes in Townley Park purchased their properties, they believed that the neighborhood would be limited to single-family homes only. Many are unhappy that two large blocks of apartments have been constructed there, and they do not want "another large block of temporary residents" to locate in the area, since they believe that that could contribute to the destabilization of their neighborhood. The Townley Park residents would prefer that the proposed location of the extended-stay hotel be used for more neighborhood-friendly uses, such as hardware stores or sit-down restaurants.

With regard to the proposed tire store, Ms. Settle stated that she had reviewed the Zoning Ordinance, and she did not believe that a tire store was an allowable use in the B-1 zone. She added that all of the other Ken Towery stores in Lexington are located on arterials, rather than in neighborhoods, and they have direct access to those arterials.

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Since many of the activities that could possibly take place in a tire store, such as automobile repairs, are not allowed in the B-1 zone, the Townley Park residents do not believe that the proposed tire store should be allowed to locate there. They are concerned that the tire store will be "unsightly, dirty, noisy, and smelly," and could increase vehicular congestion in that area of the development, since regular tire deliveries will be made in addition to customer traffic.

Ms. Settle said that several Townley Park residents were present at today's hearing, she had emails from several others who could not be present, and that they all oppose the proposed rezoning and would like for the Planning Commission to consider their needs and disapprove this request.

Conley Salyer, Vice-president of the Townley Park Neighborhood Association, stated that he believed that the proposed hotel would be out of scale with the residences in the neighborhood. He displayed several photographs depicting existing structures in the neighborhood, noting their scale as opposed to the proposed four-story hotel.

Mr. Salyer displayed a photograph of an existing Towery's tire store in Lexington, stating that he believed that the visible stacks of tires on the property were very unsightly. He noted that the residents are concerned that the proposed hotel and tire store will increase the vehicular traffic at the intersections in the commercial portion of the development, which are already overburdened. He believes that the proposed uses for the subject property are "out of touch" with the neighborhood, and are not compatible with the homeowners' expectations for their neighborhood.

Petitioner Rebuttal: Mr. Murphy stated that the proposed rezoning would not change the proportion of the uses in the Townley Center development, and he noted that no uses were promised to the residents. He said that both of the proposed uses are permitted on the subject property, and the petitioner could have obtained a building permit for the tire store on the B-1 parcel without further review by the Planning Commission. The petitioner contends, however, that the proposed zoning swap will be of benefit to the neighborhood.

Mr. Murphy said that the petitioner had met with the president of the Townley Park Neighborhood Association to inform them of the proposed rezoning, although it appeared that no formal action had been taken by the Association to notify their residents.

Mr. Murphy stated, with regard to Ms. Settle's comments about the possible uses for the proposed tire store, that the B-1 zone allows "automobile service stations," which are defined as, "a building or structure used for minor automobile and truck repair; retail sale and dispensing of fuel, lubricants, tires, batteries, accessories, and supplies, including installation and minor servicing customarily incidental thereto; facilities for washing and for chassis and gear lubrication are permitted if enclosed in a building." "Minor automobile repair" is defined as, "minor repairs, including auto inspection, engine tune-up, adjusting lights and brakes, but not including any operation as specified under 'automobile and truck repair, major.'" The Ordinance defines "major automobile and truck repair" as, "rebuilding or reconditioning of engines or transmissions, vehicles or trailers; repair and collision service, such as body, frame, or fender straightening; painting, unholstering, auto glass work, and the like." Mr. Murphy stated that the proposed tire store would not participate in any of those activities, and he noted that no outdoor storage or work would be done with tires.

With regard to Ms. Settle's concern that the tire store would be "dirty, noisy, and smelly," Mr. Murphy said that the owner of the tire store was the recipient of several awards for best business image, including being rated first in the country by *Modern Tire Dealer* magazine. Mr. Towery considers cleanliness and the maintenance of a good image and outdoor appearance critical to the success of his business.

Mr. Murphy reiterated that the petitioner contends that the proposed rezoning is appropriate for the subject property, and he requested approval.

Citizen Rebuttal: Ms. Settle stated that the fact that the proposed use is legal does not automatically make it appropriate for the proposed location.

Staff Rebuttal: Ms. Wade said that the staff and the Division of Building Inspection shared Mr. Murphy's interpretation of minor automobile repair, and that tire stores are permitted uses in the B-1 zone, as well as in the B-3 and B-4 zones.

Citizen Question: June Salyer, Townley Park resident, asked what B-1 use is proposed on the plan next to the tire store. Mr. Murphy answered that the petitioner does not have a confirmed tenant for that location, and that the development plan does not require that a tenant be identified at this time. Ms. Wade answered that the development plan indicates that that location is proposed for a restaurant, and depicts the maximum number of parking spaces, to show that such a use could work there.

Commission Comments: Ms. Roche-Phillips stated, for benefit of the Townley Park residents present, that a vote of approval from the Commission would not necessarily indicate that they endorse the proposed uses, just that they

believe that the requested rezoning is appropriate. She noted that that includes any of the allowable or conditional uses of the property could be considered and permitted following Planning Commission approval.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Cravens, and carried 7-0 (Brewer, Copeland, Holmes, and Paulsen absent) to approve the zone change for MARCV 2011-10, for the reasons provided by staff.

Conditional Use and Variance Action: A motion was made by Ms. Blanton, seconded by Mr. Cravens, and carried 7-0 (Brewer, Copeland, Holmes, and Paulsen absent) to approve the requested conditional use and variance, for the reasons provided by staff, and subject to the conditions as listed in the staff report.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Beatty, and carried 7-0 (Brewer, Copeland, Holmes, and Paulsen absent) to approve ZDP 2011-54, subject to the 11 conditions as listed in the revised staff recommendation.

### C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2011-3: AMENDMENT TO PROVIDE FOR RIGHT-OF-ENTRY, ADMINISTRATIVE WARRANTS, AND CIVIL PENALTIES (7/12/11)\* – text amendments to Articles 5, 17, 23, & 26 to provide for right-of-entry, administrative warrants, and civil penalties related to zoning enforcement.

REQUESTED BY: Urban County Council

PROPOSED TEXT: (Note: Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)

#### ARTICLE 5: ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

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##### *Proposed Changes to Provide for Administrative Search Warrants and Civil Fines*

**5-1(a) RIGHT OF ENTRY** - The Director or his authorized agent is authorized to enter upon property, land, structures or buildings, at reasonable times for the purpose of inspecting, ascertaining and causing to be corrected any violation of this Zoning Ordinance, and is hereby empowered to prescribe, adopt, promulgate, and enforce reasonable rules, regulations, and/or guidelines pertaining to administrative inspections of properties for zoning violations which are not otherwise inconsistent with the Zoning Ordinance. Whenever the Director or his authorized agent is denied entrance to any property, land, structure or building he may apply to the district court for a warrant allowing entrance and inspection. This authority shall apply to the interior of occupied, private dwellings only when the inspecting agent has reason to believe that a zoning violation exists in the dwelling.

**5-9 CIVIL CITATIONS AND CIVIL PENALTIES** – To the extent allowable by law, any violation of this Zoning Ordinance may be enforced through the issuance of a civil citation pursuant to KRS 65.8801, et seq., as an additional or supplemental means of obtaining compliance. [Where violations of this Zoning Ordinance provide for the issuance of a civil citation, such civil citation shall be construed to provide an additional or supplemental means of obtaining compliance with the Zoning Ordinance.] All citations issued pursuant to this Zoning Ordinance shall be issued by the citation officers cited in Section 14-10 of the Code of Ordinances and referred to the Infrastructure Hearing Board with the citations and the civil process to conform to Sections 16-76 through 16-83 of the Code of Ordinances.

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#### ARTICLE 17: SIGN REGULATIONS

##### *Proposed Changes to Provide for Civil Citations*

**17-14 PENALTIES FOR VIOLATION** - Violation of the provisions of these sign regulations shall constitute a misdemeanor, or in the alternative may be punishable by the issuance of a civil citation, which shall be subject to the fines and penalties as set forth in Article 5 for violation of this Zoning Ordinance.

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#### ARTICLE 23C: EXPANSION AREAS DEVELOPMENT EXACTIONS

##### *Proposed Changes to Provide for Civil Fines*

**23C-13 PENALTY AND ENFORCEMENT** - Any violation of this Article shall be subject to the penalties provided in Article 5 of the Zoning Ordinance. In addition to those [criminal] remedies, the Lexington-Fayette Urban County Government retains the right to enforce the provisions of this Article by filing an enforcement action in civil court. Knowingly furnishing false information to the Lexington-Fayette Urban

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County Government on any matter relating to the administration of this Article shall constitute a violation thereof.

**ARTICLE 26: TREE PROTECTION STANDARDS**

*Proposed Changes to Provide for Civil Fines*

**26-12 PENALTIES** – Penalties are set forth under Article 5-8, Penalties for Violations, of the Zoning Ordinance, and Article 5-9, Civil Citations and Civil Penalties. Each act or each healthy tree removed or damaged, except as described in the approved TPP, shall constitute a separate violation.

The Zoning Committee Recommended: Referral of the proposed changes to Article 5-1(a) to the full Commission due to concerns about the extent of the proposed regulation; and Approval of the remainder of the proposed text, for the applicable reasons provided by staff.

Staff Recommended: Approval, for the following reasons:

1. Enforcement of and compliance with the Zoning Ordinance has been hampered in the past by the fact that penalties for violations result in a criminal citation, and criminal court proceedings. Overall, there has been a lack of satisfaction with the existing defined procedure due to its limited success in obtaining timely compliance with the Ordinance. Amending the Zoning Ordinance to allow for the use of a civil citation process will be more effective and expedient than the existing criminal process, and should result in greater compliance with the Zoning Ordinance for the local government.
2. The proposed amendment to Article 5-1 will allow for the Division of Building Inspection, the authorized enforcement agency, to have "right-of-entry" to any land, property, structures or buildings in order to inspect, ascertain or cause to be corrected any violation of the Zoning Ordinance. The new language will allow the Division of Building Inspection to have access similar to that afforded the Division of Code Enforcement and the Fire Marshall in order to address enforcement issues. Additionally, an administrative search warrant from the Fayette District Court will be permitted to further facilitate enforcement of the Zoning Ordinance.

Staff Presentation: Ms. Wade presented the staff report, stating that this proposed text amendment was initiated by the Urban County Council. She noted that the staff had distributed copies of an exhibit handout and a letter of support from the Fayette Alliance to the Commission members prior to the start of the hearing.

Ms. Wade stated that the proposed text amendment would affect Articles 5, 17, 23C and 26 of the Zoning Ordinance, and it is intended to broaden the means of enforcement for the Division of Building Inspection in three ways: first, to allow for right-of-entry for the purpose of inspecting, ascertaining and causing to be corrected any violation of the Ordinance; second, in order to administer a search warrant, if provided for by District Court; and third, to clarify that civil citations and penalties are allowed in all cases for violations. Ms. Wade said that the proposed text was recommended by the Building Inspection Task Force, which was an ad-hoc committee of the Council established in 2009. They completed a comprehensive review of the Division of Building Inspection and its functions with regard six primary issues, two of which affect this proposed text amendment. Those issues, of safety and enforcement, were discussed by the Task Force on multiple occasions, which resulted in the Department of Law drafting the proposed text amendment. The Task Force then forwarded their recommendation to the Planning and Zoning Committee of the Council in March of 2011; Council initiated this proposed text amendment in April.

Ms. Wade said that the proposed changes to Article 5 would result in the addition of a new section regulating right-of-entry. The proposed text would allow Building Inspection to enter upon a property, land, structure, or building for the purpose of enforcing the Ordinance. The Divisions of Code Enforcement and Fire & Emergency Services currently have the authority to address life safety issues, but the Division of Building Inspection does not. Their inability to enforce the Ordinance became a concern during the student housing issues around the University of Kentucky campus two years ago. Ms. Wade noted that, in addition, the text proposed for Article 5-1(a) would allow for the Division of Building Inspection to seek an administrative search warrant from Fayette District Court, and would provide language for protection for individual property owners in residential areas from unreasonable inspections in accordance with citizens' Fourth Amendment rights.

Ms. Wade stated that the remainder of the proposed text amendment involves Articles 5-9, 17-14, 23C-13, and 26-12. Those proposed changes all pertain to allowing civil penalties to be issued as an alternative to the current practice of issuing criminal citations for violations. Under the current process, when Building Inspection identifies a zoning violation, they issue a notice of violation to the offender. That notice would identify the specific violation and provide a time period in which that violation would need to be corrected. If the offender does not correct the violation in a timely manner, or refuses to correct it all, the issue can be forwarded to Fayette District Court as a criminal matter. Overall, there has been a lack of satisfaction with this process, because it has limited success in obtaining compliance in a timely manner; and it can be costly, for both the government and the offender. Additionally, the court system does not prioritize this type of case, so the process can be very lengthy. The proposed text amendment would provide specifically for both civil and criminal penalties in the instance of any violation. Ms. Wade noted that the civil citation process is currently outlined in Article 5-9; in the past, it has been used with the Soil Erosion Control

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Ordinance. Since that regulation was moved to the Code of Ordinances, there is no section of the Zoning Ordinance that allows for a civil citation process. One of the goals of this change to the process is to achieve greater compliance with the Zoning Ordinance if notices of violation are issued. The citizen in violation would have the opportunity to either pay a fine, or appeal the case to the Infrastructure Hearing Board.

Ms. Wade stated that the staff is recommending approval of this proposed text amendment, for the reasons as listed in the staff report and on the agenda. She said that the staff presented their report to the Zoning Committee at their meeting three weeks ago, and the Committee members had some concerns about the proposed language for Article 5-1(a). The Committee, therefore, recommended referral of that section of the proposed text amendment, and approval of the remainder of the proposed text. The staff is proposing a small change to the initiated text in order to address those concerns. Ms. Wade referred to the exhibit that was provided to the Commission members prior to the hearing, stating that the staff is proposing to delete the following phrase: "...and is hereby empowered to prescribe, adopt, promulgate, and enforce reasonable rules, regulations, and/or guidelines pertaining to administrative inspections of properties for zoning violations which are not otherwise inconsistent with the Zoning Ordinance." She noted that the staff had discussed the proposed text with the staff of the Department of Law, who indicated that that text was not necessarily required to maintain the intent.

Commission Questions: Ms. Roche-Phillips stated that, at the Zoning Committee meeting, the members had concerns about providing the Division of Building Inspection the ability to enter properties. At that time, the Committee members requested that the staff conduct research to determine whether other jurisdictions have similar regulations. Ms. Wade answered that, in Kentucky, the city of Louisville has a similar provision in their Ordinance. She also found that Cleveland, Ohio, and Falls Church, Virginia, have such a provision; and the language in their Ordinances was similar to the proposed text.

Citizen Comments: Richard Murphy, attorney, stated that he was one of the attorneys who represented property owners during the discussions of the student housing problems around UK. He said that those discussions brought about the text amendments that changed the definition of "family" and limited the number of unrelated persons residing in a dwelling. Those changes were drafted with a special focus on ease of enforcement. Mr. Murphy contacted representatives of the Greater Lexington Apartment Association, which he represented during the student housing discussions, and learned that they had concerns about allowing the Division of Building Inspection the right to enter a property. He said that he did not believe that police officers could enter a property without probable cause that a crime had taken place; and he was concerned that some tenants, particularly young residents around the University, might not realize that they could refuse a government representative the right to enter the property without a warrant. The Greater Lexington Apartment Association requested that Mr. Murphy ask the Planning Commission to postpone this proposed text amendment in order to allow them to be present, as they were attending a convention at this time. After discussing the issue with Mr. Sallee, Mr. Murphy said he learned that, since the proposed text amendment was initiated by the Council, the Commission had only 60 days to act upon it, which did not allow the members of the GLAA time to fully consider all of its implications. Mr. Murphy said that, if the proposed text amendment was worded differently, he could possibly be in support of it, but the members of the GLAA have serious concerns about it as written. They intend to request postponement from the Council in order to have more time to review and consider it.

Charles Hite, 929 Aurora Avenue, stated that, as a homeowner, he was concerned that the proposed text amendment was in violation of the Fourth Amendment of the U.S. Constitution.

Commission Questions: Ms. Blanton stated that the Zoning Committee members had also had concerns about some of the implications of the proposed text amendment, and asked how Mr. Murphy would word it differently. Mr. Murphy answered that, if it were worded in the negative, i.e., "...were not authorized to enter without a warrant." He added that the resident could also consent to let the Division of Building Inspection staff enter the property.

Department of Law Comments: David Barberie, Department of Law, stated that the proposed text amendment was drafted broadly in order to be applicable to the entire Zoning Ordinance. He said that the Division of Building Inspection currently had the authority to enter business premises during operating hours without permission, and that that would not be affected by the proposed text amendment. Mr. Barberie said that, with regard to private residences, the proposed text amendment would give the Division of Building Inspection the right to enter a residence if the resident permitted them to do so. If the resident did not agree to the search, then a warrant would still need to be obtained. Mr. Barberie noted that that would be very similar to how the law currently operates, but the proposed text amendment would formalize it.

Ms. Roche-Phillips stated that it appeared that the proposed text amendment would apply only to private dwellings, rather than businesses, as Mr. Barberie had stated. Mr. Barberie responded that the specific protection inherent in the proposed text applied only to private residences; there was no need to include businesses, since their rights are different given that they are open to the public. He added that, if a portion of a structure that housed a business was

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not open to the public, a warrant would have to be obtained unless the owner agreed to allow entry to that portion of the property.

Mr. Cravens asked if the Planning Commission could postpone this item in order to allow the Greater Lexington Apartment Association time to respond. Ms. Wade answered that the Planning Commission was required to make a decision on this item prior to July 12<sup>th</sup>, and they had no more meetings scheduled prior to that date. Mr. Cravens asked if it could be postponed if the petitioner agreed. Ms. Wade responded that the Council, rather than the Planning Commission, was the petitioner in this case, and they would have to agree to the postponement.

Legal Comment: Ms. Boland said that KRS 100 requires that, if the local legislature initiates a text amendment, the Planning Commission is required to act upon in 60 days. If the Commission chooses not to act upon it, the item would go directly to the Council, which would eliminate the Commission's ability to comment on it at all. Ms. Boland noted that the Commission could choose to approve, disapprove, or make no recommendation on the proposed text amendment.

Ms. Wade noted that the Greater Lexington Apartment Association might have the opportunity to comment on this item when it goes before the Council.

Ms. Beatty asked why the Council had not heard this request prior to this meeting. Ms. Wade answered that Mr. Murphy intended to request postponement of this item at the Council work session, which would give the GLAA an opportunity to comment. Mr. Murphy added that he was not sure why the GLAA was not invited to participate in the Building Inspection Task Force process. Ms. Wade noted that, since the Council initiated this text amendment, they were familiar with the proposed text. Ms. Boland added that the text would not become an amendment to the Zoning Ordinance until it is acted upon by Council. She said that the GLAA would have the opportunity to not only request a public hearing, but ask that the Council put this item back into committee, and emphasized that this meeting would not be the last opportunity for them to comment on it.

Ms. Wade said that KRS 100 specifically states that the Planning Commission must make a recommendation of either approval or disapproval.

Mr. Cravens stated that Mr. Murphy had raised a good point with regard to the possibility that not all residents are aware of their right to refuse a search of their property. He added that he was also concerned about giving the Division of Building Inspection more rights.

Motion: A motion was made by Mr. Owens and seconded by Mr. Wilson to approve the staff alternative text for ZOTA 2011-3, for the reasons provided by staff. The motion failed, 5-2 (Owens and Wilson in favor; Beatty, Blanton, Cravens, Richardson, and Roche-Phillips opposed; Brewer, Copeland, Holmes, and Paulsen absent).

Commission Question: Ms. Richardson asked if that motion was sufficient for a recommendation of disapproval. Ms. Wade responded that the Commission could choose to disapprove the portion of the proposed text amendment that had generated the most concern, and approve the remainder, if they so chose. Ms. Boland agreed that the Commission could choose to approve only a portion of the proposed text, but noted that they must be prepared to provide a reason for their disapproval of the remainder.

Motion: A motion was made by Ms. Roche-Phillips and seconded by Mr. Wilson to approve the proposed amendments to Articles 5-9, 17-14, 23C-13, and 26-12, for reason #1 provided by staff; and to disapprove the proposed amendment to Article 5-1(a), due to the Commission's concern about right-of-entry into private dwellings.

Discussion of Motion: Mr. Cravens asked if the intent of Ms. Roche-Phillips's motion was to approve the proposed text pertaining to civil penalties, and asked if that would make it easier for a homeowner to be taken to court. Mr. Barberie answered that the civil proceeding would be much less involved, and therefore probably faster, and added that he believed that both sides would obtain a better result.

Action: Ms. Roche-Phillips's motion carried, 7-0 (Brewer, Copeland, Holmes, and Paulsen absent).

2. ZOTA 2011-4: AMENDMENT TO DEFINE AND REGULATE TEMPORARY STRUCTURES (7/12/11)\* – text amendments to Articles 1, 8, 23, & 28 to define and regulate temporary structures.

REQUESTED BY: Urban County Council

PROPOSED TEXT: (Copies of the latest draft for this text are available upon request.)

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

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1. Recent experience with large temporary structures indicates that the provisions of the Kentucky Building Code are not, by themselves, sufficient to properly regulate large, temporary structures in the Urban-County. Thus, a text amendment to the Zoning Ordinance is now required to properly regulate these structures.
2. The Council's proposed text amendment has been under consideration for some time, and will appropriately define and regulate temporary structures in excess of 400 square feet in size in Lexington-Fayette County. Even with this new regulation, property owners will have options as to how to permit new temporary structures in conjunction with their normal activities.
3. Temporary structures proposed in commercial areas, proposed to be erected for more than 60 days in a year, will require notification to nearby neighborhoods and review by the Board of Adjustment for Conditional Use Permits. Potential impacts to nearby property owners would be an ordinary part of the public hearing process involved in such instances, which is appropriate for the benefit of those residents.
4. As has been done in the past, the Planning Commission will retain authority to review and approve temporary structures as if they are permanent ones, with the submission of development plans for property in business and industrial zones.

Staff Presentation: Mr. Sallee presented the staff report, noting that this proposed text amendment was initiated by the Urban County Council and, like the previous item, would require that the Planning Commission submit a recommendation prior to their next meeting.

Referring to the two staff exhibits distributed by the staff to the Commission members, Mr. Sallee said that the first exhibit provides a visual example of how temporary structures in commercial zones are currently regulated. Currently, a temporary structure can be erected for up to six months, removed for a day or two, and then re-erected for another six months. Such use of a temporary structure at a local business led the Council to initiate the proposed text amendment. Mr. Sallee said that that exhibit also includes an example of how this text amendment would impact the use of temporary structures. Under the proposed amendment, temporary structures would be regulated similarly, but would only be allowed in commercial zones for up to 60 days. Beyond 60 days, up to the six months permitted by the Kentucky Building Code, a conditional use permit would be required. The acquisition of such a conditional use permit would require notification to area property owners and site-by-site review by the Board of Adjustment.

Mr. Sallee stated that the proposed text amendment would also define temporary structures in four ways, the first of which refers to the size of the structure. Under the Building Code, a structure of 120 square feet or less is not subject to permitting. Mr. Sallee said that the second prepared staff exhibit details a range of possible sizes of temporary structures, along with their estimated cost. He noted that these issues had been discussed between the staff, the Department of Law, and the Division of Building Inspection prior to Council initiation of this text amendment. Besides the definitions and changes to the regulation of temporary structures in commercial zones, the proposed text amendment would also define "structure" to indicate whether it has a permanent or continuous location on the ground, in order to better differentiate between a permanent and a temporary structure. Mr. Sallee stated that the staff and Zoning Committee had recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Citizen Comment: There were no citizens present to comment on this text amendment.

Action: A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 6-1 (Brewer, Copeland, Holmes and Paulsen absent; Wilson opposed) to approve ZOTA 2011-4, for the reasons provided by staff.

3. ZOTA 2011-5: CIRCUSES AND CARNIVALS – text amendment to Articles 1, 8, & 23 to define and further regulate circuses and carnivals.

REQUESTED BY: Urban County Council

PROPOSED TEXT: (Note: Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)

## **ARTICLE 1: GENERAL PROVISIONS AND DEFINITIONS**

**1-11 DEFINITIONS** – For the purpose of this Zoning Ordinance, certain terms are herewith defined. When not inconsistent with the context, words used in the present tense include the future; words in the singular number include the plural; words in the plural number include the singular; the word *person* includes association, firm, partnership, trust, governmental body, corporation, organization, as well as an individual; the word *structure* includes building; the word *occupied* includes arranged, designed or intended to be occupied; the word *used* includes arranged, designed or intended to be used; the word *shall* is always mandatory and not merely directive; the word *may* is permissive; and the word *lot* includes plot or parcel. Other words and terms shall have the following respective meanings:

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CIRCUS – A temporary use or special event lasting no longer than ten days per calendar year that is intended or likely to attract substantial crowds to view entertainment and animal performances or displays (other than a petting zoo intended for children and/or outdoor pony rides), and which is not usually associated with the principal use of the property where the special event is to be located. Such uses may or may not also include rides, games, booths, food service and merchandise sales. No accessory structure associated with a circus can be constructed or erected on a lot without a principal structure thereon.

CARNIVAL – A temporary outdoor amusement use in a business or industrial zone lasting no longer than ten days per calendar year that includes mechanical rides, with or without inflatables. Such uses may also include games, live music, games of chance, live entertainment (other than typically associated with a "circus," defined herein), booths, food service, merchandise sales, pony rides and/or a petting zoo intended for children. A carnival does not include a circus, activities conducted at the state-designated County Fair or events at the fairgrounds designated for that activity. Carnivals may not be conducted on any property during or two weeks immediately prior to the state-designated County Fair.

## ARTICLE 8: SCHEDULE OF ZONES

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### 8-16 NEIGHBORHOOD BUSINESS (B-1) ZONE

**8-16(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

12. ~~Circuses and carnivals.~~ Carnivals on a temporary basis, and upon issuance of a permit by the Division of Building Inspection, which may restrict the permit in terms of time, parking, access, or in other ways to protect public health, safety, or welfare; or deny such if public health, safety, or welfare are adversely affected. A carnival may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

**8-16(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)

21. ~~Circuses, provided all buildings are located not less than two hundred (200) feet from any residential zone; and further provided that all buildings for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home, or rest home. A circus may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.~~

### 8-17 DOWNTOWN BUSINESS (B-2) ZONE

**8-17(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. The principal permitted uses in the B-1 (and P-1) zone.

**8-17(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)

7. ~~Circuses, provided all buildings are located not less than two hundred (200) feet from any residential zone; and further provided that all buildings for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home, or rest home. A circus may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.~~

### 8-18 DOWNTOWN FRAME BUSINESS (B-2A) ZONE

**8-18(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. The principal permitted uses in the B-2 zone.

**8-18(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)

1. The permitted conditional uses in the B-2 zone.

### 8-19 LEXINGTON CENTER BUSINESS (B-2B) ZONE

**8-19(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

17. Amusement enterprises, such as circuses; carnivals; horse racing or automobile racing, provided such activity is operated on a temporary basis of a duration not exceeding two weeks.

#### 8-20 HIGHWAY SERVICE BUSINESS (B-3) ZONE

**8-20(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

15. ~~Circuses and carnivals~~ Carnivals on a temporary basis, and upon issuance of a permit by the Division of Building Inspection, which may restrict the permit in terms of time, parking, access or in other ways to protect public health, safety, or welfare; or deny such if public health, safety or welfare are adversely affected. A carnival may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

**8-20(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)

Required conditions for any conditional use permitted herein shall be as follows:

- Any conditional use shall be located, in relationship to the arterial roadway system, so that the conditional use has a minimal effect on the adjoining streets and the surrounding uses.
  - Any outdoor theater screen or illuminated scoreboard or other similar surface shall not be visible from any street for a distance of one thousand (1,000) feet from said structure.
  - Entrances of ingress or egress, acceleration lanes, and deceleration lanes shall be provided in conformance with requirements as established by the Urban County Traffic Engineer.
11. Circuses, provided all buildings are located not less than two hundred (200) feet from any residential zone; and further provided that all buildings for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home, or rest home. A circus may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

#### 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

**8-21(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

17. ~~Circuses and carnivals~~ Carnivals on a temporary basis, and upon issuance of a permit by the Division of Building Inspection, which may restrict the permit in terms of time, parking, access or other ways to protect public health, safety, or welfare; or deny such if public health, safety or welfare are adversely affected. A carnival may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

**8-21(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)

5. Circuses, provided all buildings are located not less than two hundred (200) feet from any residential zone; and further provided that all buildings for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home, or rest home. A circus may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

#### 8-22 LIGHT INDUSTRIAL (I-1) ZONE

**8-22(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. The principal permitted uses in the B-4 zone.

**8-22(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)

20. Circuses, provided all buildings are located not less than two hundred (200) feet from any residential zone; and further provided that all buildings for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home, or rest home. A circus may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

**8-23 HEAVY INDUSTRIAL (I-2) ZONE**

- 8-23(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)
1. Any principal permitted use in the I-1 zone, provided that all provisions outlined therein shall apply for said uses in this zone.
- 8-23(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)
36. Circuses, provided all buildings are located not less than two hundred (200) feet from any residential zone; and further provided that all buildings for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home, or rest home. A circus may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

**ARTICLE 23A:** *(Expansion Area)* ZONING CATEGORIES AND RESTRICTIONS

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**23A-9 COMMUNITY CENTER (CC) ZONE**

- 23A-9(b) PRINCIPAL USES**
23. Circuses and carnivals. Carnivals on a temporary basis, and upon issuance of a permit by the Division of Building Inspection, which may restrict the permit in terms of time, parking, access or other ways to protect public health, safety, or welfare; or deny such if public health, safety or welfare are adversely affected. A carnival may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.
- 23A-9(d) CONDITIONAL USES**
11. Circuses, provided all buildings are located not less than two hundred (200) feet from any residential zone; and further provided that all buildings for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing home, or rest home. A circus may not displace more than twenty five percent (25%) of the minimum required parking for the site it occupies.

The Zoning Committee Recommended: **Referral to the full Commission**, due to concerns about the necessity of the proposed amendment.

The Staff Recommended: **Approval of the staff alternative text**, for the following reasons:

1. The proposed text amendment will provide greater restrictions and oversight of permitting for circuses in Lexington-Fayette County, by the Board of Adjustment. Such regulatory changes will provide greater protection to residential neighborhoods, schools, nursing homes, rest homes, and hospitals.
2. The proposed text changes to the Zoning Ordinance are timely and necessary in order to more stringently regulate these temporary uses. Carnivals are well-suited to most any business or industrial area with the addition of off-street parking restrictions; however, circuses should be reviewed on a case-by-case basis in most areas of Lexington-Fayette County.
3. Circuses should be regulated similarly in all business and industrial zones throughout Fayette County, save the Lexington Center Business (B-2B) zone, which is centered around and intended to draw entertainment to the Civic Center and Rupp Arena area. The crowds associated with entertainment uses such as circuses can be effectively accommodated within this designated area of downtown.

Staff Presentation: Ms. Wade presented the staff report, noting that this proposed text amendment was initiated by the Urban County Council. She said that it proposes to add definitions for "circus" and "carnival," and change the way those uses are regulated in business and industrial zones. Specifically, the proposed text amendment would make a circus a conditional use in the B-1, B-2, B-2A, B-3, B-4, I-1, I-2, and CC zones. Circuses would remain a principal permitted use in the B-5P and B-2B zones, and carnivals would remain as temporary uses in all of those zones.

Ms. Wade stated that there had been concerns within the community about locating circuses near residential areas, and about the occupancy of parking lots for circuses and carnivals. The original text initiated by Council proposed leaving circuses as a principal use in the B-5P zone; the staff is proposing to have it be regulated as a conditional use in the B-5P zone similar to the other business zones, with the exception of the B-2B zone. The staff is also suggesting some minor changes to the text of the definition of "carnival" to clarify that no carnival can take place within the two weeks prior to the designated County Fair, and changing all references in the proposed text from "building" to "structure." Ms. Wade stated that the staff recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Citizen Comment: There were no citizens present to comment on this text amendment.

Action: A motion was made by Ms. Blanton, seconded by Ms. Roche-Phillips, and carried 7-0 (Brewer, Copeland, Holmes, and Paulsen absent) to approve ZOTA 2011-5, for the reasons provided by staff.

VI. **COMMISSION ITEMS** – No such items were presented.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR JULY, 2011**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	July 7, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	July 7, 2011
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>July 14, 2011</b>
Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	July 21, 2011
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>July 28, 2011</b>
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	July 29, 2011

X. **ADJOURNMENT** – There being no further business, Chairperson Richardson declared the meeting adjourned at 5:43 p.m.

TLW/TM/BJR/BS/src

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\* - Denotes date by which Commission must either approve or disapprove request.